AMER
RECORDS
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BRIEFS

(3)

No. 04-1191

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

JOYCE MORGAN, *et al.*,

Petitioners,

v.

SKF USA, Inc.,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF IN OPPOSITION

STEPHEN J. SUNDHEIM
Counsel of Record
KAY KYUNGSUN YU
BARAK A. BASSMAN
PEPPER HAMILTON LLP
3000 Two Logan Square
Eighteenth & Arch Streets
Philadelphia, PA 19103-2799
(215) 981-4000

Attorneys for Respondent

194233

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QUESTION PRESENTED

Was it arbitrary and capricious for the administrator of Respondent SKF USA, Inc.'s pension plan to interpret the term "layoff" in the plan to require a period of unemployment or interruption of wages?

CORPORATE DISCLOSURE STATEMENT

Respondent SKF USA, Inc. is a subsidiary of AB SKF, a publicly held Swedish company. No public company, other than AB SKF, owns 10% or more of the stock of SKF USA.

STATEMENT OF THE CASE

This case arises from a simple and routine application of the Employee Retirement Income Security Act ("ERISA"). Until June 11, 1999, Petitioners were employees of Respondent SKF USA Inc. ("SKF") in SKF's tapered rollers bearing ("TRB") division. Appendix ("App.") at 2. That day, SKF sold this division to another company, which became Petitioners' new employer. *Id.* To be clear, not a single Petitioner was unemployed at any time; rather, they switched employers when their division was sold. *Id.*

Nevertheless, Petitioners claimed that they were entitled to certain benefits under the pension plan for hourly employees of SKF (the "Plan") because they claimed to have been "laid off" from SKF as a result of the sale of the TRB division. *Id.* at 3. Petitioners accordingly filed claims for benefits with the Plan Administrator. *Id.* The Plan Administrator conducted a hearing on Petitioners' claims. *Id.* at 4.

After the hearing, the Plan Administrator denied Petitioners' claims because they were not subject to a "layoff." *Id.* The Plan Administrator noted that the term "layoff" was undefined in the plan. *Id.* Applying the plain meaning of the word "layoff," the Plan Administrator determined that Petitioners had not been "laid off" because they suffered no period of unemployment or interruption of wages. *Id.* The Plan Administrator accordingly denied their claims. *Id.*

Petitioners then filed suit under ERISA to recover their alleged "layoff" benefits. The United States District Court for the Western District of Kentucky granted SKF's Motion

to Dismiss on June 12, 2003. *Id.* at 20. The District Court found that the Plan vests discretionary authority in the Plan Administrator to interpret plan provisions and thus, under the Court's opinion in *Firestone Tire and Rubber Co. v. Bruch*, 489 U.S. 101 (1989), the Plan Administrator's decision would be upheld so long as it was not arbitrary and capricious. *Id.* at 11-12. The District Court held that the Plan Administrator's interpretation of the term "layoff" was not arbitrary and capricious and therefore dismissed Petitioners' Complaint. *Id.* at 13-20.

On August 4, 2003, the District Court denied Petitioners' Motion to Set Aside Judgment. *Id.* at 23. On October 8, 2004, a panel of the United States Court of Appeals for the Sixth Circuit affirmed. *Id.* at 1. On December 7, 2004, the Sixth Circuit denied Petitioners' Petition for Rehearing *En Banc*. Petitioner subsequently filed the instant Petition for a Writ of Certiorari.

REASONS FOR DENYING THE PETITION

This case presents a straightforward application of the Court's settled precedent. Petitioners agree that the lower court properly held that under the Court's opinion in *Firestone*, *supra*, the Plan Administrator's denial of benefits and interpretation of the term "layoff" will not be disturbed unless arbitrary and capricious. *See* Pet. at i. Nor do Petitioners question the validity of *Firestone*. *Id.* This case accordingly presents nothing but an alleged misapplication of settled precedent, which is an insufficient basis to seek certiorari. *See* Supreme Court Rule 10 ("A petition for writ of certiorari is rarely granted when the asserted error consists of . . . the misapplication of a properly stated rule of law").

Indeed, the only, narrow issue presented for this Court's review is whether the lower courts properly applied the *Firestone* arbitrary and capricious standard to a particular Plan Administrator's construction of the term "layoff" in the Plan. This is not an issue worthy of the Court's review because it is a question that merely affects the parties' rights, and not any larger issue of public concern. *See Keller v. Adams-Campbell Co.*, 264 U.S. 314, 319-320 (1924) (dismissing writ of certiorari as improvidently granted because dispute was merely "an ordinary patent case"); *Layne & Bowler Corp. v. Western Well Works, Inc.*, 261 U.S. 387, 393 (1923) ("it is very important that we be consistent in not granting the writ of certiorari except in cases involving principles the settlement of which is important to the public, as distinguished from that of the parties").

Nor is there a split of authority among the Circuit Courts of Appeals that could justify the Court's review. *Cf.* Supreme Court Rule 10(a) (circuit split among the reasons for granting petition for writ of certiorari). Every appellate court to apply *Firestone*'s arbitrary and capricious standard of review to the issue presented here – a Plan Administrator's construction of the term "layoff" to require a period of unemployment in the context of an asset sale where workers switch employers but never lose their jobs – has upheld the Plan Administrator's decision. *See O'Connell v. Continental Can Co., Inc.*, No. 92-2699, 1993 WL 300810 at *3-4 (7th Cir. Aug. 5, 1993) (Plan Administrator's denial of benefits to defendant's former employees whose plant was sold was not arbitrary and capricious because former employees were never unemployed and consequently never experienced "layoff"); *Kotrosits v. GATX Corp.*, 970 F.2d 1165, 1176-1177 (3d Cir. 1992) (Plan Administrator's denial of benefits to defendant's former employees after defendant sold its assets to another company

was not arbitrary and capricious because former employees were never unemployed and consequently never experienced "layoff"); *Blank v. Bethlehem Steel Corp.*, 926 F.2d 1090, 1093-1094 (11th Cir. 1991) (Plan Administrator's denial of benefits to defendant's former employees whose division was sold was not arbitrary and capricious because former employees were never unemployed and consequently never experienced "layoff").[1]

Indeed, recognizing the narrow and particularized nature of the question of how to apply *Firestone* to the review of a Plan Administrator's interpretation of the word "layoff," the Court denied petitions for writ of certiorari in both *Kotrosits* and *Blank*. *See Kotrosits v. GATX Corp.*, 506 U.S. 1021 (1992) (denying petition for writ of certiorari); *Blank v. Bethlehem Steel Corp.*, 502 U.S. 938 (1991) (same). This case is no more worthy of the Court's attention.

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[1] SKF recognizes that courts applying a *de novo* standard of review under *Firestone* (*i.e.*, where the plan does not vest discretion in the Plan Administrator to construe its terms) have reached differing results as to the meaning of the term "layoff," depending upon the terms of the plan in question. *Compare, e.g., Bellino v. Schlumberger Technologies, Inc.*, 944 F.2d 26, 32 (1st Cir. 1991) (on *de novo* review, rejecting the argument that the term "layoff" requires a period of unemployment) *with Bradwell v. GAF Corp.*, 954 F.2d 798, 800-801 (on *de novo* review, holding that the term "layoff" requires a period of unemployment). This case, however, does not involve *de novo* review. *See* Pet. at i.

CONCLUSION

For the foregoing reasons, the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

STEPHEN J. SUNDHEIM
Counsel of Record
KAY KYUNGSUN YU
BARAK A. BASSMAN
PEPPER HAMILTON LLP
3000 Two Logan Square
Eighteenth & Arch Streets
Philadelphia, PA 19103-2799
(215) 981-4000

Attorneys for Respondent